

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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JANE R. NIGHTENGALE,

Plaintiff,

v.

No. CIV 97-473 BB/RLP

NANCY PURTELL, in her individual  
and official capacities, CHRISTINA  
GUNN, in her individual and official  
capacities, and the BOARD OF  
REGENTS OF THE UNIVERSITY  
OF NEW MEXICO,

Defendants.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court on Defendants' motions for summary judgment on (1) Plaintiff's First Amendment claims [#23], (2) Plaintiff's Due Process claims [#25], and (3) Plaintiff's ADA claims [#27]. After oral argument on September 14, 1998, the Court found Defendants' first two motions to be well taken and GRANTED summary judgment as to Plaintiff's First Amendment and Due Process claims for the reasons enunciated from the bench. The Court took Defendants' motion on the ADA claims under advisement, giving the parties the opportunity to brief the applicability of the qualified immunity defense to Plaintiff's ADA claims. Having

considered the materials submitted, the Court FINDS Defendants' motion is not well taken and the *Motion for Summary Judgment on Plaintiff's ADA Claims* will be DENIED.


### **Discussion**

Defendants' motion is not supported by legal logic or authority. First, Plaintiff's ADA claim is brought against her employer alone, not against the individual Defendants. *See Mason v. Stallings*, 82 F.3d 1007 (11<sup>th</sup> Cir. 1996) (ADA does not provide for individual liability). A defense of qualified immunity may be maintained only by an individual defendant, not an official-capacity defendant or an institutional defendant. *See, e.g., Kentucky v. Graham*, 473 U.S. 159, 166-67 (1985) (immunity defenses such as absolute immunity or qualified immunity are not available in official-capacity actions). Second, none of the legal authority advanced by Defendants applies qualified immunity to preclude ADA claims. Indeed, none of these cases makes more than a tangential reference to qualified immunity as it affects an ADA claim and in most of them the plaintiff prevailed on their ADA contentions.

### **ORDER**

For the above stated reasons, *Defendants' Motion for Summary Judgment on Plaintiff's ADA Claims* [#27] is **DENIED**.

Dated at Albuquerque this 6<sup>th</sup> day of October, 1998.

  
**BRUCE D. BLACK**  
United States District Judge

Counsel for Plaintiffs:

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